



Bailout Bill Sweetener Expands Mental Health Parity

Within the widely-publicized Emergency Economic Stabilization Act, also known as the “bailout bill” is a “sweetener” known as the Paul Wellstone and Pete Dominici Mental Health Parity and Addiction Equity Act of 2008 (the “Wellstone Act”). The Wellstone Act amends ERISA, the Public Health Service Act (PHSA) and the Internal Revenue Code (“Code”) by setting forth new requirements for mental health benefits and substance use disorder benefits.

We have summarized below the basic provisions of the Wellstone Act, along with our comments in italics.

Expansion of Benefits. The Wellstone Act expands the parity under the previously entitled Mental Health Parity Act to include both mental health and substance use disorder benefits.

Previously, the MHPA definition of mental health benefits did not include substance abuse or chemical dependency benefits. Expanding the parity requirements to substance abuse or chemical dependency benefits may dramatically increase the benefit offerings of some employers.

The terms “mental health benefits” and “substance use disorder benefits” are “as defined under the terms of the plan and in accordance with applicable Federal and State law.”

Fully insured plans must continue to comply with state mandated benefits, while self-funded plans will have more flexibility to design benefit offerings under ERISA.

Financial Requirements. The financial requirements applicable to mental health or substance use disorder benefits may not be more restrictive than the predominant financial requirements applied to substantially all medical and surgical benefits. Likewise, a plan may not have

separate cost sharing requirements applicable only to mental health and substance use disorder benefits.

“Financial requirements” refer to deductibles, copayments, coinsurance and out of pocket expenses, but exclude aggregate lifetime limit and annual limits.

“Predominant” means the most common or frequent type of limit or requirement.

Treatment Limitations. The treatment limitations applicable to mental health and substance use disorder benefits may not be more restrictive than the predominant treatment limitations applied to substantially all medical and surgical benefits. Likewise, a plan may have no separate treatment limitations applicable only to mental health and substance use disorder benefits.

“Treatment limitations” refer to plan limits such as frequency of treatment, number of visits, or days of coverage.

It appears that the treatment limitations rule will prohibit separate inpatient and outpatient day limits not applicable to other medical or surgical benefits. For example, a plan presumably will not be able to apply limits on the number of visits for specific types of care, like chiropractic care, to mental health and substance use disorder benefits.

Out of Network Providers. If the plan covers out of network providers for medical and surgical benefits, the plan shall cover out of network providers for mental health and substance use disorder benefits.

The out of network rule may be the most dramatic change over current law. Many plans currently manage costs by providing mental health and substance use disorder benefits on an in network basis only.

Medical Necessity. The criteria for medical necessity determinations with respect to mental health and substance use disorder benefits shall be made available by the plan administrator or insurer to any current or potential participant, beneficiary or contracting provider upon request. Likewise, the reason for any denial shall be made available by the plan administrator or insurer to the participant or beneficiary.

Small Employer Exception. The Wellstone Act expands the definition of small employer (currently defined as 2 to 50 employees), to 1 to 50 employees, where state law permits small groups to include a single individual.

Again, this provision would relate to fully insured plans.

Cost Exemption. If the application of the Wellstone Act results in an increase in the total cost of coverage by more than 2% in the first year, and 1% in each subsequent plan year the plan may seek a 1 year plan exemption. The determination must be certified by a qualified and licensed actuary.

The MHPA contained a similar exemption, which was used by only a handful of plans. For this reason, and suspecting the same may be true under the Wellstone Act, we will not summarize the numerous requirements for requesting the exemption and the requirements for notice, confidentiality and audits by the Secretary.

Effective Date. The Wellstone Act is to be effective for plan years beginning 1 year after the date of enactment. For calendar year plans, this will mean January 1, 2010.

There will be no further need for the annual extension of the sunset provisions as under the MHPA.

Undoubtedly, plans must examine their mental health and substance use disorder benefits closely in the months ahead, and amend their plan documents to comply with the Wellstone Act. As with any other legislation, it is also a good time to maximize risk management strategies while conforming plans to the newest requirements of the law.

For more information, please contact Haynes Benefits PC at 816-875-1919 or visit www.haynesbenefits.com.